C.S.S.B. 472 - Senator Schwartz
S.B. 490 - Senator Jones
S.B. 520 - Senator Mauzy
S.B. 527 - Senator Harrington
S.B. 544 - Senator Farabee
C.S.S.B. 558 - Senator Lombardino
S.B. 561 - Senator Schwartz
S.B. 595 - Senator Jones
S.B. 637 - Senator Gammage
S.B. 705 - Senator Mauzy
S.B. 718 - Senator Aikin
S.B. 752 - Senator Williams
S.B. 822 - Senator Mauzy
S.B. 834 - Senator Moore
S.B. 986 - Senator Moore
S.B. 1012 - Senator Moore

MEMORIAL RESOLUTIONS

S.R. 386 - By Senator Adams: Memorial resolution for Dr. C. C. Young.

S.R. 387 - By Senator Ogg: Memorial resolution for Arthur J. Mandell.

S.R. 388 - By Senator Ogg: Memorial resolution for Woodrow Wilson Sanderfer.

WELCOME AND CONGRATULATORY RESOLUTIONS

S.R. 384 - By Senator Harrington: Extending welcome to and designating Robert E. Cousins as honorary page.

S.R. 385 - By Senators Williams and Brooks: Extending congratulations to Jack Lee Terry.

S.R. 389 - By Senator McKnight: Extending congratulations to Mrs. Blanche Eastwood.

ADJOURNMENT

On motion of Senator Aikin, the Senate at 12:26 o'clock p.m. adjourned until 10:30 o'clock a.m. tomorrow.

FORTY-NINTH DAY
(Tuesday, April 8, 1975)

The Senate met at 10:30 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: McKinnon.

A quorum was announced present.

Father Fred Bomar, St. Peter the Apostle Catholic Church, Austin, Texas, offered the invocation as follows:

O God, our Father, as we begin this new day, we pause to acknowledge Your blessed presence among us and we acknowledge You as the supreme Legislator of all mankind. We pray this morning for an ever-increasing measure of Your guidance and grace upon the leadership and members of this distinguished group of the Senate of Texas. May we all be richly endowed with an understanding of Your Divine Laws and may our lives and our deliberations today conform to these Laws. May we never become so proud as to be unmindful of Your laws and holy will or arrogant to any worthy citizen of Texas. May we be patient and concerned, industrious and honest, courageous and forthright. May our lives always conform to Your holy Will. We pray in the Name of Your Son our Lord Jesus Christ. Amen.

On motion of Senator Aikin and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

Senator McKinnon was granted leave of absence for today on account of important business on motion of Senator McKnight.

REPORTS OF STANDING COMMITTEES

Senator Brooks submitted the following report for the Committee on Human Resources:

C.S.S.B. 272 (Read first time)

Senator Moore submitted the following reports for the Committee on State Affairs:

S.B. 465
S.B. 435
H.B. 564
S.B. 1012
H.B. 199
S.B. 497
C.S.S.B. 881 (Read first time)
C.S.S.B. 464 (Read first time)
C.S.S.B. 528 (Read first time)

MESSAGE FROM THE HOUSE

Hall of the House of Representatives
Austin, Texas, April 8, 1975

Honorable William P. Hobby
President of the Senate

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 52, Memorializing Congress to enact legislation to require all states to develop oil and gas resources as Texas is doing.

H.C.R. 98, Requesting Governor Briscoe to initiate discussion and negotiations that could lead to importation of water to Texas.

H.C.R. 112, Inviting Dr. Charles Malik, former president of U. N. and Dr. William R. Bright, founder and president of Campus Crusade for Christ to address joint session.

The House refused to concur in Senate amendments to House Bill 679 and has requested the appointment of a Conference Committee to consider the differences between the two Houses. House Conferees: Schieffer, Chairman, Olson, Denson, Weddington, Wyatt.

H.B. 659, A bill to be entitled An Act relating to the procedure for preparing the statements of canvass and returns in elections where voting machines are used; amending paragraph (c), Section 18 of Section 79, Texas Election Code, as amended (Article 7.14, Vernon's Texas Election Code); and declaring an emergency.

H.B. 756, A bill to be entitled An Act relating to the courts having jurisdiction to hear complaints of failing to comply with the compulsory school attendance law; amending Subsection (a), Section 4.25, Texas Education Code, as amended; and declaring an emergency.

H.B. 919, A bill to be entitled An Act relating to the authority of guardians of estates of wards to make tax-motivated gifts; amending Subsection (b), Section 230, Texas Probate Code; and declaring an emergency.

H.B. 1633, A bill to be entitled An Act amending Article 3.51-2 of the Insurance Code of the State of Texas, as amended, same being Acts 1951, 52nd Legislature, Regular Session, Chapter 491, page 868, as amended, codified as Vernon's Texas Civil Statutes, Insurance Code, to authorize counties and political subdivisions of the State of Texas to procure certain group insurance policies covering their respective officers, employees and retirees, to pay for all or part of the premiums with local funds; providing a severability clause; and declaring an emergency.

H.B. 305, A bill to be entitled An Act relating to platting and recording of subdivisions; amending Sections 3 and 6, Chapter 231, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 974a, Vernon's Texas Civil Statutes); and declaring an emergency.

H.B. 605, A bill to be entitled An Act relating to the payment of specified claims made against the State of Texas; authorizing the comptroller of public accounts to issue

warrants for the payment of miscellaneous claims; providing a procedure for qualifying miscellaneous claims; and declaring an emergency.

H.B. 727, A bill to be entitled An Act relating to the limitation on operating expenses of certain exempt insurance associations; amending Article 14.17, Insurance Code, as amended; and declaring an emergency.

H.B. 965, A bill to be entitled An Act relating to a judge's willful and persistent conduct that is clearly inconsistent with the performance of his duties; adding Section 17 to Chapter 516, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 5966a, Vernon's Texas Civil Statutes); and declaring an emergency.

Respectfully submitted,
DOROTHY HALLMAN
Chief Clerk, House of Representatives

BILLS SIGNED

The President announced the signing in the presence of the Senate after the caption had been read, the following enrolled bills:

S.B. 74 (Signed subject to the provisions of Section 49a, Article III of the Constitution of the State of Texas)
S.B. 470
S.B. 353
S.B. 222
S.B. 87
H.B. 719

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committees indicated:

H.B. 617, To Committee on State Affairs.
H.B. 619, To Committee on Natural Resources.
H.B. 630, To Committee on Education.
H.B. 1004, To Committee on Intergovernmental Relations.
H.B. 558, To Committee on State Affairs.
H.B. 1294, To Committee on Intergovernmental Relations.
H.B. 1149, To Committee on Natural Resources.
H.B. 1019, To Committee on Intergovernmental Relations.
H.B. 316, To Committee on State Affairs.
H.B. 1238, To Committee on Education.
H.B. 816, To Committee on Intergovernmental Relations.
H.B. 381, To Committee on Human Resources.
H.B. 537, To Committee on Intergovernmental Relations.
H.B. 866, To Committee on Intergovernmental Relations.
H.B. 124, To Committee on State Affairs.
H.B. 364, To Committee on Intergovernmental Relations.
H.B. 1749, To Committee on State Affairs.

SENATE BILLS ON FIRST READING

By unanimous consent the following bills were introduced, read first time and referred to the Committee indicated:

By Senator Traeger:

S.B. 1028, A bill to be entitled An Act amending Acts 1933, 43rd Legislature, First Called Session, Page 198, Chapter 75, as amended by Acts 1935, 44th Legislature, First Called Session, page 1615, Chapter 410, and by Acts 1969, 61st Legislature, Regular Session, page 1465, Chapter 432 (codified as Article 8280-106, Vernon's Texas Civil Statutes), by amending Sections 1, 2, 7, 9, 11, 12, 13, 15 and 16 thereof; finding notice of intention to introduce this Act; containing a severability clause; and declaring an emergency.

To Committee on Natural Resources.

By Senator Snelson:

S.B. 1029, A bill to be entitled An Act relating to tuition and fees for certain students holding competitive scholarships; amending Subsection (p), Section 54.051, Texas Education Code, as amended; and declaring an emergency.

To Committee on Education.

SENATE BILL 41 WITH HOUSE AMENDMENTS

Senator Sherman called **S.B. 41** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amend **S.B. 41** by striking all below the enacting clause and substituting the following:

Section 1. PURPOSE. It is declared the public policy of this state to afford minimum standards of uniform practice and procedure for state agencies, to provide for public participation in the rulemaking process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action.

Sec. 2. SHORT TITLE. This Act shall be known and may be cited as the Administrative Procedure and Texas Register Act.

Sec. 3. DEFINITIONS. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

(2) "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or

practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

(8) "Register" means the Texas Register established by this Act.

Sec. 4. PUBLIC INFORMATION; ADOPTION OF RULES; AVAILABILITY OF RULES AND ORDERS. (a) In addition to other rulemaking requirements imposed by law, each agency shall:

(1) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available;

(2) index and make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions; and

(3) index and make available for public inspection all final orders, decisions, and opinions.

(b) No agency rule, order, or decision made or issued on or after the effective date of this Act is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been indexed and made available for public inspection as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge of the rule, order, or decision.

Sec. 5. PROCEDURE FOR ADOPTION OF RULES. (a) Prior to the adoption of any rule, an agency shall give at least 30 days' notice of its intended action. Notice of the proposed rule shall be filed with the secretary of state and published by the secretary of state in the Texas Register. The notice must include:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule, except any portion omitted as provided in Section 6(c) of this Act, prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(3) a statement of the statutory or other authority under which the rule is proposed to be promulgated;

(4) a request for comments on the proposed rule from any interested person; and

(5) any other statement required by law.

(b) Each notice of a proposed rule becomes effective as notice when published in the register. The notice shall be mailed to all persons who have made timely written requests of the agency for advance notice of its rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

(c) Prior to the adoption of any rule, an agency shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing must be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The agency shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

(d) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days renewable once for a period not exceeding 60 days, but the adoption of an identical rule under Subsections (a) and (c) of this section is not precluded. An emergency rule adopted under the provisions of this subsection, and the agency's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register.

(e) No rule hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years after the effective date of the rule.

(f) An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons concerning contemplated rulemaking. Each agency also is authorized to appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of these committees are advisory only.

Sec. 6. CREATION OF TEXAS REGISTER. (a) The secretary of state shall compile, index, and publish a publication to be known as the Texas Register, which shall contain:

(1) notices of proposed rules issued after the effective date of this Act and filed in the office of the secretary of state as provided in Section 5 of this Act;

(2) the text of rules adopted after the effective date of this Act and filed in the office of the secretary of state;

(3) notices of open meetings issued after the effective date of this Act and filed in the office of the secretary of state as provided by law;

(4) executive orders issued by the governor after the effective date of this Act;

(5) summaries of requests made after the effective date of this Act for opinions of the attorney general, which shall be prepared by the attorney general and forwarded to the secretary of state;

(6) summaries of opinions of the attorney general issued after the effective date of this Act, which shall be prepared by the attorney general and forwarded to the secretary of state; and

(7) other information of general interest to the public of Texas, which may include, but is not limited to, federal legislation or regulations affecting the state or state agencies and state agency organizational and personnel changes.

(b) The secretary of state shall publish the register at regular intervals, but not less than 100 times each calendar year.

(c) The secretary of state may omit from the register any information the publication of which he deems cumbersome, expensive, or otherwise inexpedient, if the information is made available in printed or processed form by the adopting agency on application for it, and if the register contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained.

(d) One copy of each issue of the register shall be made available free on request to each board, commission, and department having statewide jurisdiction, to the governor, to the lieutenant governor, to the attorney general, to each member of the legislature, to each county clerk in the state, and to the Supreme Court, Court of Criminal Appeals, and each Court of Civil Appeals.

(e) The secretary of state shall make copies of the register available to other persons on payment of reasonable fees to be fixed by the secretary of state.

Sec. 7. FILING OF EXISTING DOCUMENTS. Before March 1, 1976, each agency shall file in the office of the secretary of state two certified copies of each rule existing on the effective date of this Act. Existing rules become effective immediately on filing with the secretary of state.

Sec. 8. FILING PROCEDURES. (a) Each agency shall file a document for publication in the Texas Register by delivering to the office of the secretary of state during normal working hours two certified copies of the document to be filed. On receipt of a document required by this Act to be filed in the office of the secretary of state and published in the register, the secretary of state shall note the day and hour of filing on the certified copies. One certified copy of each filed document must be maintained in original form or on microfilm in a permanent register in the office of the secretary of state and, on filing, shall be made available immediately for public inspection during regular business hours.

(b) If there is a conflict, the official text of a rule is the text on file with the secretary of state, and not the text published in the register or on file with the issuing agency.

(c) The secretary of state may promulgate rules to insure the effective administration of this Act. The rules may include, but are not limited to, rules prescribing paper size and the format of documents required to be filed by this Act. The secretary of state may refuse to accept for filing and publication any document that does not substantially conform to the promulgated rules.

(d) The secretary of state may maintain on microfilm the files of agency rules and any other information required by this Act to be published in the register and, after microfilming, destroy the original copies of all information submitted for publication.

Sec. 9. TABLES OF CONTENTS; CERTIFICATION; LIAISON. (a) Each issue of the register must contain a table of contents.

(b) A cumulative index to all information required by this Act to be published during the previous year shall be published at least once each year.

(c) Each document submitted to the secretary of state for filing or publication as provided in this Act must be certified by an official of the submitting agency authorized to certify documents of that agency.

(d) Each agency shall designate at least one individual to act as a liaison through whom all required documents may be submitted to the secretary of state for filing and publication.

Sec. 10. EFFECT OF FILING. (a) Each rule hereafter adopted becomes effective 20 days after the filing of two certified copies in the office of the secretary of state, except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date; and

(2) subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately on filing with the secretary of state, or on a stated date less than 20 days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare; and

(3) if a federal statute or regulation requires that an agency implement a rule by a certain date, the rule is effective on the prescribed date.

(b) An agency finding, as described in Subsection (a)(2) of this section, and a brief statement of the reasons for it, shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

(c) A rule adopted as provided in Subsection (a)(3) of this section shall be filed in the office of the secretary of state and published in the register.

Sec. 11. PETITION FOR ADOPTION OF RULES. Any interested person may petition an agency requesting the adoption of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 5 of this Act.

Sec. 12. DECLARATORY JUDGMENT ON VALIDITY OR APPLICABILITY OF RULES. The validity or applicability of any rule, including an emergency rule adopted under Section 5(d) of this Act, may be determined in an action for declaratory judgment in a district court of Travis County, and not elsewhere, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency must be made a party to the action. A declaratory judgment may be rendered whether the plaintiff has requested the agency to pass on the validity or applicability of the rule in question. However, no proceeding brought under this section may be used to delay or stay a hearing after notice of hearing has been given if a suspension, revocation, or cancellation of a license by an agency is at issue before the agency.

Sec. 13. CONTESTED CASES; NOTICE; HEARINGS; RECORDS. (a) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice of not less than 10 days.

(b) The notice must include:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

(c) If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

(d) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

(e) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) The record in a contested case includes:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

(g) Proceedings, or any part of them, must be transcribed on written request of any party. The agency may pay the cost of the transcript or assess the cost to one or more parties. This Act does not limit to a stenographic record of proceedings.

(h) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

Sec. 14. RULES OF EVIDENCE, OFFICIAL NOTICE. (a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) In connection with any contested case held under the provisions of this Act, an agency may swear witnesses and take their testimony under oath.

(c) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (1)(1) and (2) of this section, an agency shall issue a subpoena addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(d) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (1)(1)

and (2) of this section, an agency shall issue a commission, addressed to the several officers authorized by statute to take depositions, to require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects as may be necessary and proper for the purposes of the proceeding. The deposition of a member of an agency board may not be taken after a date has been set for hearing.

(e) The place of taking the depositions shall be in the county of the witness' residence, or where the witness is employed or regularly transacts business in person. The commission shall authorize and require the officer or officers to whom it is addressed, or either of them, to examine the witness before him on the date and at the place named in the commission and to take answers under oath to questions which may be propounded to the witness by the parties to the proceeding, the agency, or the attorneys for the parties or the agency. The commission shall require the witness to remain in attendance from day to day until the deposition is begun and completed.

(f) The witness shall be carefully examined, the testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under the officer's personal supervision, or by the deponent in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent.

(g) The officer taking the oral deposition may not sustain objections to any of the testimony taken, or exclude any of it, and any of the parties or attorneys engaged in taking testimony have their objections reserved for the action of the agency before which the matter is pending. The administrator or other officer conducting the hearing is not confined to objections made at the taking of the testimony.

(h) When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and read to or by the witness, unless the examination and reading are waived by the witness and by the parties in writing. However, if the witness is a party to the contested case pending before the agency with an attorney of record, the deposition officer shall notify the attorney of record in writing by registered mail or certified mail that the deposition is ready for examination and reading at the office of the deposition officer, and if the witness does not appear and examine, read, and sign the deposition within 20 days after the mailing of the notice, the deposition shall be returned as provided in this Act for unsigned depositions. In any event, the witness must sign the deposition at least three days prior to the hearing, or it shall be returned as provided in this Act for unsigned depositions. Any changes in form or substance which the witness desires to make shall be entered on the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties present at the taking of the deposition by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver, illness, or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given for failure to sign. The deposition may then be used as fully as though signed.

(i) A deposition may be returned to the agency before which the contested case is pending either by mail, or by a party interested in taking the deposition, or by any other person. If returned by mail, the agency shall endorse on the deposition that it was received from the post office and shall cause the agency employee so receiving the deposition to sign it. If not sent by mail, the person delivering it to the agency shall make affidavit before the agency that he received it from the hands of the officer before whom it was taken, that it has not been out of his possession since, and that it has undergone no alteration.

(j) A deposition, after being filed with the agency, may be opened by any employee of the agency at the request of either party or his counsel. The employee shall endorse on the deposition on what day and at whose request it was opened, signing

the deposition, and it shall remain on file with the agency for the inspection of any party.

(k) Regardless of whether cross interrogatories have been propounded, any party is entitled to use the deposition in the contested case pending before the agency.

(l) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding under the authority of this section is entitled to receive:

(1) mileage of 10 cents a mile, or a greater amount as prescribed by agency rule, for going to, and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(2) a fee of $10 a day, or a greater amount as prescribed by agency rule, for each day or part of a day the person is necessarily present as a witness or deponent.

(m) Mileage and fees to which a witness is entitled under this section shall be paid by the party or agency at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the agency.

(n) In the case of failure of a person to comply with a subpoena or commission issued under the authority of this Act, the agency issuing the subpoena or commission, acting through the attorney general, or the party requesting the subpoena or commission, may bring suit to enforce the subpoena or commission in a district court in Travis County. The court, if it determines that good cause exists for the issuance of the subpoena or commission, shall order compliance with the requirements of the subpoena or commission. Failure to obey the order of the court may be punished by the court as contempt.

(o) In contested cases, documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original.

(p) In contested cases, a party may conduct cross-examinations required for a full and true disclosure of the facts.

(q) In connection with any hearing held under the provisions of this Act, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they must be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.

(r) In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

Sec. 15. EXAMINATION OF RECORD BY AGENCY. If in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the officials who are to render the decision. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this section.

Sec. 16. DECISIONS AND ORDERS. (a) A final decision or order adverse to a party in a contested case must be in writing or stated in the record.

(b) A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be

accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

(c) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing, and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If an agency board includes a member who (1) receives no salary for his work as a board member and who (2) resides outside Travis County, the board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication. If an agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by other than a majority of the officials of an agency, the agency may prescribe a longer period of time within which the final order or decision of the agency shall be issued. The extension, if so prescribed, shall be announced at the conclusion of the hearing.

(e) Except as provided in Subsection (c) of this section, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the agency within 25 days after the date of rendition of the final decision or order, and agency action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If agency action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The agency may by written order extend the period of time for filing the motions and replies and taking agency action, except that an extension may not extend the period for agency action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order.

(f) The parties may by agreement with the approval of the agency provide for a modification of the times provided in this section.

Sec. 17. EX PARTE CONSULTATIONS. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

Sec. 18. LICENSES. (a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license.

Sec. 19. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act.

(b) Proceedings for review are instituted by filing a petition within 30 days after the date the decision or order complained of is final and appealable, in a district court of Travis County, and not elsewhere, except in cases where venue is otherwise provided by statute. Copies of the petition shall be served on the agency and on all parties of record in the agency hearing involved in the matter for which review is sought.

(c) After service of the petition on the agency, and within the time permitted for filing an answer or such additional time as may be allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(d) If, before the date set for hearing, application is made to the court for permission to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency under conditions determined by the court. The agency may modify its findings and decision because of the additional evidence and shall file the evidence and any modifications, new findings, or decisions with the reviewing court.

(e) The review shall be conducted by the court without a jury and shall be confined to the record. Proof of alleged irregularities in procedure before the agency, not shown in the record, may be taken in the court.

(f) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact committed to agency discretion. The court may affirm the decision of the agency in whole or in part. The court shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions:

(1) are in violation of constitutional or statutory provisions;

(2) are in excess of the statutory authority of the agency;

(3) were made under procedures not authorized by law;

(4) are affected by other error of law;

(5) are not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or

(6) are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(g) Nothing contained in this section affects the right of trial de novo of rate cases appealed from the Railroad Commission of Texas.

Sec. 20. APPEALS. Appeals from any final judgment of the district court may be taken by any party in the manner provided for in civil actions generally, but no appeal bond may be required of an agency.

Sec. 21. EXCEPTIONS. (a) This Act does not apply to suspensions of driver's licenses as authorized in Article IV, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

(b) Sections 13 through 21 of this Act do not apply to the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under service programs of the State Department of Public Welfare.

Sec. 22. REPEAL OF CONFLICTING LAWS. Chapter 274, Acts of the 57th Legislature, Regular Session, 1961 (Article 6252-13, Vernon's Texas Civil Statutes), and all other laws and parts of laws in conflict with this Act are repealed. This Act does not repeal any existing statutory provisions conferring investigatory authority on any agency, including any provision which grants an agency the power, in connection with the investigatory authority, to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, conduct hearings, or issue subpoenas or summons.

Sec. 23. EFFECTIVE DATE. This Act takes effect on January 1, 1976.

Sec. 24. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

FLOOR AMENDMENT 2

Amend Von Dohlen Amendment to Senate Bill 41 by deleting all of Section 19 and substituting in lieu thereof the following:

Section 19. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. This section is cumulative of other means of redress provided by statute.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:

(1) the petition if filed in the District Court of Travis County, Texas;

(2) a copy of the petition must be served on the agency and all parties of record in the proceedings before the agency; and

(3) the filing of the petition vacates an agency decision for which trial de novo is the manner of review authorized by law, but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) If the manner of review authorized by law for the decision complained of is by trial de novo, the reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior agency action or the nature of that action (except to the limited extent necessary to show compliance with statutory provisions which vest jurisdiction in the court). Any party to a trial de novo review may have, on demand, a jury determination of all issues of fact on which such a determination could be had in other civil suits in this state.

(d) If the manner of review authorized by law for the decision complained of is other than by trial de novo:

(1) after service of the petition on the agency, and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record;

(2) any party may apply to the court for leave to present additional evidence and the court, if it is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the agency, may

order that the additional evidence be taken before the agency on conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court;

(3) the review is conducted by the court sitting without a jury and is confined to the record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

(e) The scope of judicial review of agency decisions is as provided by the law under which review is sought. Where the law authorizes appeal by trial de novo, the courts shall try the case in the manner applicable to other civil suits in this state and as though there had been no intervening agency action or decision. Where the law authorizes review under the substantial evidence rule, or where the law does not define the scope of judicial review, the court may not substitute its judgment for that of the agency as to the weight of the evidence on questions committed to agency discretion but may affirm the decision of the agency in whole or in part and shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;
(2) in excess of the statutory authority of the agency;
(3) made upon unlawful procedure;
(4) affected by other error of law;
(5) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or
(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

FLOOR AMENDMENT 3

Amend the Hale amendment to the Floor Amendment 1 to Senate Bill 41 by substituting in lieu thereof the following:

Section 19. JUDICIAL REVIEW OF CONTESTED CASES. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. ~~[A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.~~] This section is cumulative of other means of redress provided by statute.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:

(1) the petition is filed in a District Court of Travis County, Texas;

(2) a copy of the petition must be served on the agency and all parties of record in the proceedings before the agency; and

(3) the filing of the petition vacates an agency decision for which trial de novo is the manner of review authorized by law, but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) If the manner of review authorized by law for the decision complained of is by trial de novo, the reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior agency action or the nature of that action (except to the limited extent necessary to show compliance with statutory provisions which vest jurisdiction in the court). Any party to a trial de novo review may have, on demand, a jury determination of all issues of fact on which such a determination could be had in other civil suits in this state.

(d) If the manner of review authorized by law for the decision complained of is other than by trial de novo:

(1) after service of the petition on the agency, and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record;

(2) any party may apply to the court for leave to present additional evidence and the court, if it is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the agency, may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court;

(3) the review is conducted by the court sitting without a jury and is confined to the record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

(e) The scope of judicial review of agency decisions is as provided by the law under which review is sought. Where the law authorizes appeal by trial de novo, the courts shall try the case in the manner applicable to other civil suits in this state and as though there had been no intervening agency action or decision. Where the law authorizes review under the substantial evidence rule, or where the law does not define the scope of judicial review, the court may not substitute its judgment for that of the agency as to the weight of the evidence on questions committed to agency discretion but may affirm the decision of the agency in whole or in part and shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;
(2) in excess of the statutory authority of the agency;
(3) made upon unlawful procedure;
(4) affected by other error of law;
(5) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or
(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

FLOOR AMENDMENT 4

Amend **S.B. 41** by striking all above the enacting clause and substituting the following:

"A BILL TO BE ENTITLED

AN ACT

"providing standards for state administrative practices and procedures; providing for the creation of a state register; providing for review of state agency proceedings; repealing Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252-13, Vernon's Texas Civil Statutes); and declaring an emergency."

The House amendments were read.

Senator Sherman moved to concur in House amendments.

The motion prevailed.

HOUSE BILL 647 RECOMMITTED

On motion of Senator Harris and by unanimous consent, **H.B. 647** was recommitted to the Committee on Economic Development.

SENATE BILL 387 WITH HOUSE AMENDMENT

Senator Williams called **S.B. 387** from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

COMMITTEE AMENDMENT 1

Amend Senate Bill 387, First Printing, by deleting on lines 16 and 17 of page 7, the words and figures "Fifteen Thousand Dollars ($15,000)" and insert in their place the phrase "such amount as may be provided in said master contract".

The House amendment was read.

Senator Williams moved to concur in House amendment.

The motion prevailed.

SENATE BILL 28 WITH HOUSE AMENDMENTS

Senator Meier called **S.B. 28** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Amend Grant amendment to **S.B. 28** by adding a new Section 3 to read as follows and by renumbering present sections as necessary:

Section 3. LIMITATIONS. An insurer operating under the requirements of Section 2 shall not contract itself to practice law in any manner, nor shall it control or attempt to control the relations existing between an insured and his or her attorney[; ~~but the insurer shall confine its activities to contracting as an agent on behalf of its insureds for legal services to be rendered only by and through attorneys with whom it contracts~~]. These attorneys shall never be employees of the insurer but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the insured. Such insurer must agree to pay any attorney licensed by the Supreme Court to practice law in Texas for such services rendered.

Amend **S.B. 28** by adding a new Section 3 to read as follows and by renumbering present sections as necessary:

Section 3. LIMITATIONS. An insurer operating under the requirements of Section 2 shall not contract itself to practice law in any manner, nor shall it control or attempt to control the relations existing between an insured and his or her attorney, but the insurer shall confine its activities to contracting as an agent on behalf of its insureds for legal services to be rendered only by and through attorneys with whom it contracts. These attorneys shall never be employees of the insurer but shall at all times be

independent contractors maintaining a direct lawyer and client relationship with the insured. Such insurer must agree to contract with any attorney licensed by the Supreme Court to practice law in Texas.

Amend House Committee Amendment No. 1 by striking Section 2 thereof and substituting therefor the following:

"Sec. 2. The Insurance Code, as amended, is amended by the addition of a new Article 5.13-1 of the Insurance Code which provides as follows:

'Article 5.13-1. Legal Service Contracts,

'(a) Every insurer governed by Subchapter B. of Chapter 5 of the Insurance Code, as amended, and every life, health and accident insurer governed by Chapter 3 of the Insurance Code, as amended, is authorized to issue prepaid legal services contracts. Every such insurer or rating organization authorized under Article 5.16 of the Insurance Code shall file with the State Board of Insurance all rules and forms applicable to prepaid legal service contracts in a manner to be established by the State Board of Insurance. All rates, rating plans and charges shall be established in accordance with actuarial principles for various categories of insureds. Rates, rating plans and charges shall not be excessive, inadequate, unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. Certification, by a qualified actuary, to the appropriateness of the charges, rates, or rating plans, based upon reasonable assumptions, shall accompany the filing along with adequate supporting information.

'(b) The State Board of Insurance shall, within a reasonable period, approve any form if the requirements of this Section are met. It shall be unlawful to issue such forms until approved or to use such schedules of charges, rates or rating plans until filed and approved. If the State Board of Insurance has good cause to believe such rates and rating plans do not comply with the standards of this Article, it shall give notice in writing to every insurer or rating organization which filed such rates or rating plans, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than thirty (30) days thereafter, in which such noncompliance may be corrected. If the Board has not acted on any form, rate, rating plan or charges within thirty (30) days after the filing of same, they shall be deemed approved. The Board may require the submission of whatever relevant information deemed necessary in determining whether to approve or disapprove a filing made pursuant to this Section.

'(c) The right of such insurers to issue prepaid legal services contracts on individual, group, or franchise bases is hereby recognized, and qualified agents of such insurers who are licensed under Articles 21.07, 21.07-1 and 21.14 of the Insurance Code shall be authorized to write such coverages under such rules and regulations as the State Board of Insurance may prescribe.

'(d) The State Board of Insurance is hereby vested with power and authority under this Article to promulgate, after notice of hearing, and to enforce, rules and regulations concerning the application to the designated insurers of this Article and for such clarification, amplification, and augmentation as in the discretion of the State Board of Insurance are deemed necessary to accomplish the purposes of this Article.

'(e) This Article shall be construed as a specific exception to Article 3.54, of the Texas Insurance Code.

'(f) Nothing in this Act shall be construed as compelling the State Board of Insurance to establish standard or absolute rates and the Board is specifically authorized, in its discretion to approve different rates for different insurers for the same risk or risks on the types of insurance covered by this Article; nor shall this Article be construed as to require the State Board of Insurance to establish a single or uniform rate for each risk or risks or to compel all insurers to adhere to such rates previously filed by other insurers; and the Board is empowered to approve such different rates for different insurers, and is required to approve such rates as filed by any insurer unless it

finds that such filing does not meet the requirements of this Article."

Amend the amendment to Senate Bill 28 by striking the second sentence of Subsection (1) of Article 23.02 and substituting the following: "Such funds shall, at all times prior to issuance by the State Board of Insurance of its certificate of authority as below provided, be maintained in a trust account in a bank in Texas and shall be refunded in full should such certificate of authority not be issued."

Amend Article 23.19 of **S.B. 28** by eliminating the commas after "agreements" and "treaties" in line 16, page 9 of House 2nd printing and adding the word "or" between the words "agreements" and "guaranty".

Amend the amendment to **S.B. 28** by adding the following phrase to line 18, page 6 after $25,000:

"for each officer" and moving the period from the end of $25,000 to after the word officer, and line 9 of page 7 and adding "for each employee."

COMMITTEE AMENDMENT 1

Amend **S.B. 28** by striking all below the enacting clause and inserting the following:

Section 1. The Insurance Code, as amended, is amended by addition of the following as Chapter 23 thereof:

CHAPTER TWENTY THREE

NON-PROFIT LEGAL SERVICES CORPORATIONS

Article 23.01. INCORPORATION; DEFINITIONS. Any seven or more persons on application to the Secretary of State for a corporate charter under the Texas Non-Profit Corporation Act as a non-membership corporation may be incorporated for the sole purpose of establishing, maintaining and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided.

As used in this Chapter, the following words, unless the context of their use clearly indicates otherwise, shall have the following meanings:

(1) Attorney - a person currently licensed by the Supreme Court of Texas to practice law.

(2) Applicant - a person applying for a legal services contract for performance of legal services through a corporation qualified under this Chapter.

(3) Benefit Certificate - a writing setting forth the benefits and other required matters issued to a participant under a group contract for legal services and also an individual contract for legal services issued to a participant.

(4) Contracting Attorney - an attorney who has entered into the contract provided by Article 23.11.

(5) Participant - the person entitled to performance of legal services under contract with a corporation qualified under this Chapter.

(6) State Board of Insurance - means all of the insurance regulatory officials whose duties and functions are designated by the Insurance Code of Texas as such now exists or may be amended in the future. Any duty stated by this Chapter to be performed by or to be placed on the State Board of Insurance is placed upon and is to be performed by the insurance regulatory official or group of officials on whom similar duties are placed or to be performed for insurers or the business of insurance by the Insurance Code. The multi-member insurance regulatory body designated by the Insurance Code as the uniform insurance rule making authority is authorized to enact rules designating the proper insurance regulatory official to perform any duty placed by this chapter on the insurance regulatory officials where such duty is not similar to duties otherwise performed by a specific official or group of such officials.

Article 23.02. SUPERVISION; REQUIREMENTS. All corporations organized under the provisions of this Chapter shall be under the direct supervision of the State Board of Insurance, and shall be subject to the following requirements:

(1) After incorporation, but as a condition of doing business other than seeking applicants and obtaining contracting attorneys, they shall have collected in advance from at least 200 applicants (unless a lesser number of applicants is found by the State Board of Insurance to be a large enough number of applicants to constitute a workable prepaid legal service plan) the application fee and at least one month's payment for services. Such funds shall at all times prior to the State Board of Insurance issuing its certificate of authority as below provided be maintained in a trust account in a bank in Texas and shall be refunded in full should such certificate of authority not be issued. It shall thereinafter be a condition of continued operation that a minimum number of 200 participants or lesser number previously approved by the State Board of Insurance be maintained.

(2) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the State Board of Insurance not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the State Board of Insurance.

(3) They shall maintain solvency in each of its funds, i.e., the admitted assets of each such fund shall exceed its liabilities (except for claim liability covered by attorney guarantees provided by Article 23.15), and it shall be a continuing condition of licensing by the State Board of Insurance that such solvency be maintained.

(4) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this Chapter, the State Board of Insurance shall issue it a certificate of authority authorizing it to transact business until such certificate shall be revoked for noncompliance with law, by operation of law or as provided by this Chapter.

Article 23.03. ATTORNEYS UNDER CONTRACT. Each corporation complying with the requirements of this Chapter before issuing any contract for prepaid legal services shall have and so long as it issues such contracts maintain such number of contracting attorneys as is sufficient in the determination of the State Board of Insurance to service the participant contracts contemplated by the corporation's plan of operation.

Article 23.04. OFFICERS: EMPLOYEES BOND. Each corporation complying with the requirements of this Chapter shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the State Board of Insurance, designate some officer or officers who shall be responsible in the handling of the funds of the corporation. Said corporation shall make and file for each such officer a surety bond or blanket bond covering all such officers with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than $25,000 for the use and benefit of said corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of each such officer, either directly and alone or in connivance with others, while employed as such an officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the State Board of Insurance cash (or securities approved by the State Board of Insurance) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond.

In addition to the bond required in the preceding paragraph, each corporation shall procure for all other office employees, or other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts fixed by the State Board of Insurance with a minimum of $1,000 and a maximum of $10,000, satisfactory

and payable to the State Board of Insurance for the use and benefit of the corporation obligating the principal and surety to pay each pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

Article 23.05. CLAIMS; CANCELLATION OF CERTIFICATE OF AUTHORITY. All lawful claims for payment based upon certificates issued to participants shall be paid within 120 days after receipt of due proof of claim. Written notice of claim given to a corporation complying with the requirements of this Chapter shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the participant making claim within 15 days such forms as are usually furnished by it for filing such claims. The State Board of Insurance after public hearing on written specifications after 20 days notice shall cancel the certificate of authority of any such corporation found to be not in compliance with this Chapter, operating fraudulently, or which fails to pay its valid claims in accordance with the provisions of this article.

Article 23.06. DISSOLUTION. Any dissolution or liquidation of any corporation subject to the provisions of this Chapter shall be under the supervision of the State Board of Insurance. In case of dissolution of any group formed under the provisions of this Chapter, participants' claims shall be given priority over all other claims except cost of liquidation.

Article 23.07. METHOD OF DISSOLUTION. Any corporation operating under this Chapter may be dissolved at any time by a vote of its board of directors, and after such action has been approved by the State Board of Insurance. In the case of voluntary dissolution, the disposition of the affairs of the corporation shall be made by the officers (including the settlement of all outstanding obligations to participants), and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved by the State Board of Insurance, the provisions for voluntary dissolution under the Texas Non-Profit Corporation Act shall be followed to dissolve the corporation. In all other cases where a corporation operating under this Chapter is found to be insolvent, or to have violated the provisions of this Chapter, on a determination of this condition, and after due notice and hearing, the affairs of the corporation shall be disposed of by a liquidator appointed by and under the supervision of the State Board of Insurance, or, in appropriate cases, under the direction of a court of competent jurisdiction in Travis County.

Article 23.08. FEES; TAXES. (a) The State Board of Insurance shall charge a fee of $50.00 for filing the annual statement of each corporation operating under this Chapter; an application fee of $100.00 for each corporation applying under this Chapter; and a fee of $25.00 for the issuance of each certificate of authority to the corporation.

(b) To defray the expense of carrying out the provisions of this Chapter, there shall be annually assessed and collected by the State of Texas, through the State Board of Insurance, from each corporation operating under this Chapter, in addition to all other taxes now imposed, or which may hereafter be imposed by law, a tax of one percent of all revenues received by such corporation in return for issuance of prepaid legal services contracts in this state, according to the reports made to the State Board of Insurance as required by law. Said taxes, when collected, shall be placed in a separate fund with the State Treasurer which shall be kept separate and apart from other funds and moneys in his hands, and shall be known as the Prepaid Legal Services Fund, said Fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures shall not exceed in the aggregate the sum assessed and collected from such corporations; and should there be an unexpended balance at the end of any year, the State Board of Insurance shall reduce the assessment for the succeeding year so that the amount

produced and paid into the State Treasury together with said unexpended balance in the Treasury will be sufficient to pay all expenses of carrying out the provisions of this Chapter, which funds shall be paid out and filed by a majority of the State Board of Insurance when the Comptroller shall issue warrants therefor. Any amount remaining in said Fund at the end of any year shall be carried over and expended in accordance with the provisions of this article during the subsequent year or years. Provided, that no expenditures shall be made from said Fund except under authority of the Legislature as set forth in the general appropriations bill.

(c) The payment of the maximum tax of one percent provided by the preceding section of this article by any corporation complying with this Chapter in any year either as a maintenance tax or as a voluntary elected payment into the General Revenue Fund of the State of Texas or a combination of such payments equaling such one percent shall be deemed to be a payment in lieu of any franchise or other gross receipts tax by or under the laws of this state and such corporation shall be exempt from such franchise and other gross revenue taxes as would apply to such corporation during the period for which the one percent tax or voluntary payment or combination thereof is made.

Article 23.09. APPLICATIONS. Any corporation complying with the requirements of this Chapter shall be authorized to accept applicants, who upon issuance of a benefit certificate shall be entitled to legal services for such period of time as is provided therein. Such corporation shall be governed by this Chapter and shall not be construed as being engaged in the business of insurance nor subject to laws respecting insurers so long as it complies with the provisions of this Chapter. The provisions of this article shall not be deemed to declare the issuance of contracts for prepaid legal services when done by those entities other than corporations complying with this Chapter not to be the business of insurance. The right of corporations complying with the requirements of this Chapter to issue prepaid legal services contracts on individual, group and franchise bases is recognized.

Article 23.10. CORPORATIONS NON-PROFIT; FUNDS; INVESTMENTS. The corporations complying with the requirements of this Chapter shall be governed and conducted as non-profit non-membership organizations for the purpose of contracting for and obtaining legal services for their participants through contracting attorneys, in consideration of the payment by the participants of a definite sum to fund the payment of attorneys fees for the legal services to be furnished by the contracting attorneys. Provided, further, that each such corporation shall have two funds, namely: the Claim Fund and the Expense Fund. The Claim Fund shall be composed of at least 80 percent of the regular payments by participants, and the application fees. The percentage amounts above stated may be modified by the State Board of Insurance upon showing that such is in the best interest of the then existing persons receiving legal services under contract or that such is necessary for the development of the corporation during its first year of existence. The application fees shall be paid by applicants prior to issuance of a benefit certificate, and shall not apply as a part of the cost of receiving benefits under the benefit certificate issued. Claim Fund investments may include, besides lawful monies and demand deposits, only certificates of deposits, share accounts and time deposits in public banks and saving and loan institutions whose deposits are insured by a federal governmental agency, and obligations of a state or the federal government; and the Expense Fund investments may include only such as are legal investments for the capital, surplus, and contingency funds of capital stock life insurance companies. The net income from the investments shall accrue to the funds, respectively, from which the investments were made. The Claim Fund shall be disbursed only for the payment of valid claims, taxes on income of such fund, security transfer costs, and refunds of fees paid into such fund; and to the extent approved by the State Board of Insurance, cost of settling contested claims, expenses directly incurred on or for preservation of investments of the Claim Fund and contracts authorized under Article 23.19.

Article 23.11. AUTHORITY TO CONTRACT. Corporations complying with the requirements of this Chapter shall have authority to contract in accordance with this Chapter with attorneys in such manner as to assure to each participant holding a benefit certificate of the corporation the furnishing of such legal services by attorney under contract, or who shall agree to contract, to the extent agreed upon in prepaid legal service contract between the corporation and the participant, with the right to the corporation to limit in the prepaid legal service contract and benefit certificate the types and extent of benefits and the circumstances for which such legal services shall be furnished.

Article 23.12. LIMITATIONS. The corporation complying with the requirements of this Chapter shall not contract itself to practice law in any manner, nor shall the corporation control or attempt to control the relations existing between a participant and his or her attorney, but the corporation shall confine its activities to contracting as an agent on behalf of its participants for legal services to be rendered only by and through contracting attorneys, who shall never be employees of the corporations but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the participants. Such corporation must agree to contract under Article 23.11 with any attorney licensed by the Supreme Court to practice law in Texas. Contracting attorneys shall maintain such professional liability, and errors and omissions insurance as the corporation shall deem proper and the State Board of Insurance may by uniform rule declare a minimum amount of each such coverages to be maintained.

Article 23.13. CONTINGENT LIABILITIES. Any person may advance to the corporation on contingent liability basis such funds as are necessary for the purposes of its business or to enable it to comply with any requirements of this Chapter and such monies and interest thereon as may have been agreed upon shall be repayable and shall be repaid only on prior approval of the State Board of Insurance.

Article 23.14. SUPERVISION. Every corporation complying with the requirements of this Chapter shall, before accepting applications for participation in said non-profit legal service plan, have sufficient money in its Expense Fund to cover initial operations and shall submit to the State Board of Insurance a plan of operation together with a rate schedule of its charges to participants and a schedule and projections of costs of legal services to be contracted for on behalf of the participants; which plan, rate schedule and the sufficiency of Expense Fund shall first be approved by the State Board of Insurance as adequate, fair and reasonable and not excessive before such corporation shall engage in business. The State Board of Insurance shall have continuing control over the plan of operation of such corporation and its rate schedule of charges to participants. No change in such plan or rate schedule shall be effectuated without its first being filed and approved by the State Board of Insurance.

Article 23.15. APPROVAL OF RATES. The State Board of Insurance shall likewise approve the ratio of benefits to be paid to anticipated revenues from the rate schedule proposed to be used if such be found to be actuarially sound. No prepaid legal services contract or benefit certificate thereunder shall be issued by corporations complying with this Chapter without such finding. The contracting attorneys shall guarantee to the participants the services stated under the benefit certificates and shall agree to perform such services which they agree to render to the participants under the benefit certificates without there being any liability for the cost thereof to the participants beyond the funds of such corporation held for their benefit in accordance with the plan of operation of the corporation. Such corporations may issue prepaid legal service contracts without such guarantees and providing for indemnity for costs of attorney services where the attorney is not a contracting attorney under such rules and regulations as may be approved by the State Board of Insurance provided that the State Board of Insurance be satisfied that the plan of operation, financial standing and experience of the corporation (including but not limited to a proper amount of free surplus) is adequate to assure the performance of such contracts.

Article 23.16. BENEFIT CERTIFICATES AND LEGAL SERVICES CONTRACTS. Every corporation shall issue to its applicants that are covered by a contract for prepaid legal services benefit certificates setting forth the benefits to which they are or may become entitled. Such certificates, application forms, and contracts made between the corporation and the participants' employer or group representative shall be in form approved by the State Board of Insurance prior to issuance. The State Board of Insurance shall be authorized to issue rules and regulations concerning such forms to provide that they shall properly describe their benefits and not be unjust, misleading or deceptive.

Article 23.17. BANK DEPOSITS. All funds collected from applicants and participants of a corporation complying with this Chapter shall be deposited to the account of the corporation in a public bank, which is a state depository having Federal Deposits Insurance Corporation protection of its deposits

Article 23.18. FINANCE PROCEDURES. A corporation complying with the requirements of this Chapter shall not pay any of the claim funds collected from participants to any attorney except for legal services rendered by such attorney to the participants.

Article 23.19. PARTICIPATION CONTRACTS; AGREEMENTS WITH INSURERS. Corporations complying with the requirements of this Chapter shall be authorized to contract with other organizations complying with this Chapter and insurers licensed to do business in Texas for joint participation through mutualization contract agreements, guaranty treaties, or otherwise cede or accept legal services obligations from such companies on the whole or any part of such legal service obligations, provided that such contract forms, documents, treaties, or agreement forms are filed with and approved by the State Board of Insurance shall be authorized to issue rules and regulations concerning such participation contracts and agreements with insurers as provided by this article in accordance with and in carrying out its purposes.

Article 23.20. EXPENSES OF DIRECTORS; MEETINGS. No director of any corporation created under this Chapter shall receive any salary, wages or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of the corporation.

Article 23.21. EXAMINATION OF BOOKS AND RECORDS. Every corporation complying with this Chapter shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the State Board of Insurance the expense of such examination to be borne by said corporation.

Article 23.22. COMPLAINTS. The State Board of Insurance shall refer any complaints received by it concerning the performance of any attorney connected with any corporation complying with this Chapter to the Supreme Court of the State of Texas or to any person designated by the Supreme Court to receive attorney grievances from the public.

Article 23.23. REGULATION OF AGENTS. The State Board of Insurance may after notice and hearing promulgate such reasonable rules and regulations as are necessary to license and control agents of corporations complying with this Chapter. An agent means a natural person who solicits legal services contracts or enrolls applicants.

Article 23.24. HAZARDOUS FINANCIAL CONDITION. (1) Whenever the financial condition of any corporation complying with the requirements of this Chapter indicates a condition such that the continued operation of such corporation might be hazardous to its participants, creditors or the general public, then the State Board of Insurance may, after notice and hearing, order such corporation to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(a) to reduce the total amount of present and potential liability for benefits by use of Article 23.19;

(b) to reduce the volume of new business being accepted;

(c) to reduce expenses by specified methods; or

(d) to suspend or limit the writing of new business for a period of time.

Where none of the foregoing remedies are effective and the hazardous condition is determined to be a shortage of moneys in the Expense Fund the State Board of Insurance may after further notice and hearing order funds sufficient to cure the hazardous condition be placed in the Expense Fund (The State Board of Insurance shall not have authority hereby to require the maintenance of moneys in the Expense Fund except as provided by Articles 23.02(3).

(2) The State Board of Insurance is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of any company might be hazardous to its participants, creditors, or the general public, and to fix standards for evaluating the financial condition of any corporation complying with the requirement of this chapter, which standards shall be consistent with the purposes expressed in this Article.

Article 23.25 MANAGEMENT AND EXCLUSIVE AGENCY CONTRACTS. (a) No corporation complying with the requirements of this Chapter may enter into an exclusive agency contract or management contract, unless the contract is first filed with the State Board of Insurance and approved under this article within thirty days after filing or such reasonable extended period as the State Board of Insurance may specify by notice given within the thirty days.

(b) The State Board of Insurance shall disapprove a contract submitted under Section (a) of this article if it finds that:

(1) it subjects the corporation to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the corporation are not sufficiently trustworthy, competent, experienced and free from conflict of interest to manage the corporation with due regard for the interest of its participants, creditors or the public; or

(5) the contract contains provisions which impair the interests of the corporation's participants, creditors, or the public in this state.

Article 23.26 APPLICATION OF OTHER LAWS.

a. Corporations complying with this chapter shall be subject to and are required to comply with the provisions of the Texas Miscellaneous Corporation Act, the Texas Non-Profit Corporation Act as those laws now exist or may be amended in the future to the extent the provisions of this Chapter are not in conflict therewith.

b. The following provisions of the Insurance Code as they now exist or shall hereafter be amended shall, where not in conflict with this chapter, apply to corporations complying with the provisions of this chapter to the same extent as they apply to insurers and to those doing the business of insurance: Article 1.01, 1.02, 1.04, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.29, 3.12, 3.13, 3.14, 21.21, 21.25, 21.28, 21.28A, 21.47 and Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of the Insurance Code.

Sec. 2. The Insurance Code, as amended, is amended by the addition of a new Article 5.13-1 of the Insurance Code which provides as follows:

Article 5.13-1. LEGAL SERVICE INSURANCE. Every insurer governed by Subchapter B of Chapter 5 of the Insurance Code, as amended, and every life, health, and accident insurer governed by Chapter 3 of the Insurance Code, as amended, is authorized to issue prepaid legal services contracts. Every such insurer or rating organization shall file with the State Board of Insurance all rules and forms applicable to prepaid legal services contracts in the manner provided in Article 5.15 of the Insurance Code. All rates and rating plans shall be reasonable, adequate and nonconfiscatory, and shall be filed with the State Board of Insurance. If the State Board of Insurance has good cause to believe such rates and rating plans do not comply

with the standards of this subchapter, it shall give notice in writing to every insurer or rating organization which filed such rates or rating plans, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than thirty (30) days thereafter, in which such noncompliance may be corrected.

The right of such insurers to issue prepaid legal services contracts on individual, group and franchise bases if hereby recognized, and qualified agents of such insurers who are licensed under Articles 21.07, 21.07-1 and 21.14 of the Insurance Code shall be authorized to write such coverages under such Rules and Regulations as the State Board of Insurance shall prescribe.

The State Board of Insurance is hereby vested with power and authority under this article to promulgate, after notice and public hearing, and to enforce rules and regulations concerning the application to the designated insurers of this article and for such clarification, amplification, and augmentation as in the discretion of the State Board of Insurance are deemed necessary to accomplish the purposes of this article.

Sec. 3. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The House amendments were read.

Senator Meier moved to concur in House amendments.

The motion prevailed.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 53

Senator Schwartz submitted the following Conference Committee Report:

Austin, Texas
April 2, 1975

Honorable William P. Hobby
President of the Senate

Honorable Bill Clayton
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 53** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

SCHWARTZ
MEIER
ADAMS
BROOKS
DOGGETT
On the part of the Senate

BAKER

McDONALD of Hidalgo
HARRIS
On the part of the House

The Conference Committee Report was read and was adopted by the following vote: Yeas 30, Nays 0.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: McKinnon.

MOTION TO RECONSIDER VOTE BY WHICH SENATE CONCURRED IN HOUSE AMENDMENTS TO SENATE BILL 41

Senator Moore moved to reconsider the vote by which the Senate concurred in House amendments to Senate Bill 41.

The motion was lost by the following vote: Yeas 7, Nays 23.

Yeas: Andujar, Creighton, McKnight, Mengden, Moore, Snelson and Traeger.

Nays: Adams, Aikin, Braecklein, Brooks, Clower, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, Meier, Ogg, Patman, Santiesteban, Schwartz, Sherman and Williams.

Absent-excused: McKinnon.

CONFERENCE COMMITTEE ON HOUSE BILL 679

Senator Adams called from the President's table for consideration at this time, the request of the House for a Conference Committee to adjust the differences between the two Houses on **H.B. 679** and moved that the request be granted.

Senator Mauzy made the substitute motion that the Senate do not grant the request of the House for a Conference Committee.

The motion was lost by the following vote: Yeas 8, Nays 21.

Yeas: Andujar, Braecklein, Doggett, Harrington, Harris, Mauzy, Mengden and Patman.

Nays: Adams, Aikin, Brooks, Clower, Creighton, Farabee, Gammage, Hance, Jones, Kothmann, Lombardino, McKnight, Meier, Moore, Ogg, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent: Longoria.

Absent-excused: McKinnon.

Question recurring on the motion to grant the request of the House for a Conference Committee, the motion prevailed.

RECORD OF VOTES

Senators Mauzy and Doggett asked to be recorded as voting "Nay" on the motion to grant the request of the House.

Senator Schwartz moved to instruct the Senate Conferees to retain in the Conference Committee Report the amendment by Senator Schwartz which was adopted by the Senate on Wednesday, April 2.

The motion to instruct the Senate Conferees prevailed by the following vote: Yeas 16, Nays 14.

Yeas: Aikin, Andujar, Braecklein, Brooks, Clower, Doggett, Gammage, Harrington, Harris, Kothmann, Longoria, Mauzy, Patman, Schwartz, Traeger and Williams.

Nays: Adams, Creighton, Farabee, Hance, Jones, Lombardino, McKnight, Meier, Mengden, Moore, Ogg, Santiesteban, Sherman and Snelson.

Absent-excused: McKinnon.

There were no other motions offered to instruct the conferees.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Adams, Chairman; McKnight, Traeger, Gammage and Longoria.

CO-AUTHOR OF SENATE BILL 881

On motion of Senator Doggett and by unanimous consent, Senator Ogg will be shown as Co-author of **S.B. 881.**

CO-AUTHOR OF SENATE BILL 272

On motion of Senator Doggett and by unanimous consent, Senator Ogg will be shown as Co-author of **S.B. 272**.

SENATE BILL 196 ON SECOND READING

Senator Santiesteban asked unanimous consent to suspend the regular order of business and take up **S.B. 196** for consideration at this time.

There was objection.

Senator Santiesteban then moved to suspend the regular order of business and take up **S.B. 196** for consideration at this time.

The motion prevailed by the following vote: Yeas 19, Nays 9.

Yeas: Aikin, Andujar, Clower, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Lombardino, Longoria, Mauzy, Mengden, Moore, Santiesteban, Schwartz, Sherman, Traeger and Williams.

Nays: Adams, Braecklein, Creighton, Jones, Kothmann, McKnight, Meier, Patman and Snelson.

Absent: Brooks and Ogg.

Absent-excused: McKinnon.

The President laid before the Senate on its second reading and passage to engrossment:

S.B. 196, A bill to be entitled An Act relating to the right of eminent domain for the purpose of obtaining access to land in which the state has a mineral interest; amending Chapter 497, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 5421c-7, Vernon's Texas Civil Statutes), by adding a Section 9; amending Chapter 16, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 5421c-10, Vernon's Texas Civil Statutes), by adding a Section 4a; and declaring an emergency.

The bill was read second time.

Senator Santiesteban offered the following amendment to the bill:

Amend **S.B. 196** by striking Section 9(d) of Section 1 and striking Section 4a(d) of Section 2 and substituting the following in both sections:

"(d) If the School Land Board certifies that the easement is necessary and that a lessee, or his assignee, or a permittee made a reasonable effort at a reasonable price to obtain the easement, the lessee, assignee, or permittee may file a petition to initiate condemnation proceedings in either the county or the district court, as allowed by the applicable statutes, to acquire the easement by condemnation. The state need not be a party to the suit.

The amendment was read and was adopted.

Senator Santiesteban offered the following amendment to the bill:

Amend **S.B. 196** by changing the period to a comma in both Section 9(e) of Section 1 and Section 4a(e) of Section 2 and inserting the following language after the comma in both sections:

"provided however, that upon release or abandonment of the mine or permit to prospect, any easements obtained by eminent domain proceedings from the surface owner in conjunction with such mine or permit shall revert to the surface owner at the time of such release or abandonment."

The amendment was read and was adopted.

On motion of Senator Santiesteban and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by the following vote: Yeas 15, Nays 14, 1 Present-Not Voting.

Yeas: Aikin, Brooks, Clower, Doggett, Farabee, Gammage, Harrington, Lombardino, Longoria, Mauzy, Moore, Santiesteban, Schwartz, Sherman and Williams.

Nays: Adams, Andujar, Braecklein, Creighton, Hance, Harris, Jones, Kothmann, McKnight, Meier, Mengden, Patman, Snelson and Traeger.

Present-Not Voting: Ogg.

Absent-excused: McKinnon.

SENATE BILL 822 ON SECOND READING

On motion of Senator Mauzy and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 822, A bill to be entitled An Act relating to the election of members of the governing board of certain countywide community college districts from single member trustee districts and to the dates and manner of conducting the elections; amending Chapter 130, Texas Education Code, by adding Section 130.0821; and declaring an emergency.

The bill was read second time and was passed to engrossment.

SENATE BILL 822 ON THIRD READING

Senator Mauzy moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 822** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: McKinnon.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed.

SENATE BILL 544 ON SECOND READING

On motion of Senator Farabee and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 544, A bill to be entitled An Act relating to certification of the genetic purity and identity of seeds and plants; relating to the composition, powers, and duties of the State Seed and Plant Board; relating to the licensing of producers of certified classes of seeds and plants; relating to the registration of plant breeders; relating to the registration of certain varieties of cotton; providing penalties for the violation of offenses defined in this Act and certain regulations; repealing Articles 56, 57, 58, 59, 60, 61, 62, 63, 64, 64a, 65, 66, and 67, Revised Civil Statutes of Texas, 1925, as amended, and Chapter 93, Acts of the 41st Legislature, 1929, as amended (Article 67a, Vernon's Texas Civil Statutes); and declaring an emergency.

The bill was read second time.

Senator Farabee offered the following Committee Amendment to the bill:

Amend Senate Bill 544, Section 3, sub-section (2) by striking the word "Agronomy" and substituting in lieu therefor the words "Plant and Soil Sciences".

The Committee Amendment was read and was adopted.

Senator Farabee offered the following amendment to the bill:

Amend **S.B. 544,** Section 4, paragraph (a) by adding a new sentence at the end thereof, to read as follows:

"This paragraph (a) shall not go into effect until one year from the time of passage of this Act."

The Committee Amendment was read and was adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

SENATE BILL 544 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 544** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: McKinnon.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: McKinnon.

SENATE BILL 595 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading

and passage to engrossment:

S.B. 595, A bill to be entitled An Act amending the Texas Seed Law, as amended (Article 93b, Vernon's Texas Civil Statutes), as follows: amending Section 2, relating to definitions of terms used in the act; amending Section 3, relating to label requirements for seed; amending Section 3a, relating to treated seed; amending Subsection (a), Section 4, relating to prohibited acts; amending Section 5, relating to exemptions from requirements of the act; amending Section 6, relating to powers and duties of the commissioner of agriculture; amending Section 7, relating to inspection fees; adding a Section 7A, relating to vegetable seed licenses; providing penalties; and declaring an emergency.

The bill was read second time.

Senator Jones offered the following Committee Amendment to the bill:

Amend **S.B. 595** on page 11, line 2, by striking the word, "handled", and all the words following, and inserting the following: "sold, offered for sale, or exposed for sale by an individual or organization for a farmer, and is not shipped by common carrier."

The Committee Amendment was read and was adopted.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

SENATE BILL 595 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 595** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: McKinnon.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: McKinnon.

SENATE BILL 1012 ORDERED NOT PRINTED

On motion of Senator Moore and by unanimous consent, **S.B. 1012** was ordered not printed.

SENATE BILL 1012 ON SECOND READING

Senator Moore asked unanimous consent to suspend the regular order of business and take up **S.B. 1012** for consideration at this time.

There was objection.

Senator Moore then moved to suspend the regular order of business and take up **S.B. 1012** for consideration at this time.

The motion prevailed.

The President laid before the Senate on its second reading and passage to engrossment:

S.B. 1012, A bill to be entitled An Act relating to the size of type used in contracts; and declaring an emergency.

The bill was read second time and was passed to engrossment.

RECORD OF VOTES

Senators McKnight and Creighton asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

SENATE BILL 1012 ON THIRD READING

Senator Moore moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1012** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Nays: McKnight.

Absent-excused: McKinnon.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed.

RECORD OF VOTES

Senators Creighton, Farabee, Sherman, McKnight and Braecklein asked to be recorded as voting "Nay" on the final passage of the bill.

SENATE BILL 233 ON SECOND READING

On motion of Senator Meier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 233, A bill to be entitled An Act relating to the powers and duties of certain counties with respect to urban renewal; adding Subsection (x) to Section 4 and amending Section 5, Urban Renewal Law, as amended (Article 12691-3, Vernon's Texas Civil Statutes); and declaring an emergency.

The bill was read second time and was passed to engrossment.

SENATE BILL 233 ON THIRD READING

Senator Meier moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 233** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: McKinnon.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Yeas: Adams, Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Absent-excused: McKinnon.

SENATE BILL 561 ON SECOND READING

On motion of Senator Schwartz and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 561, A bill to be entitled An Act amending Article 20.01, Title 122A, Taxation - General, Revised Civil Statutes of Texas, 1925, as amended, to provide a

definition of newspaper; amending Article 20.04, Title 122A, Taxation - General, Revised Civil Statutes of Texas, 1925, as amended, to provide a sales and use tax exemption for the receipts from the sale of, or the storage, use, or other consumption of tangible personal property that becomes an ingredient or component part of certain defined newspapers, and to provide a sales and use tax exemption for the receipts from the printing and sales of certain defined newspapers, or components thereof, under certain limited circumstances; providing for severability; and declaring an emergency.

The bill was read second time.

Senator Schwartz offered the following amendment to the bill:

Amend Senate Bill 561 by striking Section 1 and substituting the following:

Section 1. Article 20.01, Title 122A, Taxation - General, Revised Civil Statutes of Texas, 1925, as amended, is hereby amended by adding thereto and inserting immediately after subsection (X) thereof, a new subsection (Y) to read as follows:

"(Y) Newspaper. 'Newspaper' means those publications which are printed and distributed periodically at daily, weekly, or other short intervals not exceeding four weeks, for the dissemination of news of a general character and of a general interest. For purposes of this subsection, advertising is considered to be news of a general character and of a general interest. The term 'newspaper' does not include handbills, circulars, flyers, or the like, unless such items, when printed, are printed for the purpose of distribution as a part of a publication which itself constitutes a newspaper within the meaning of this subsection, and are in fact actually distributed as part of a newspaper as herein defined."

The amendment was read and was adopted.

On motion of Senator Schwartz and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

RECORD OF VOTE

Senator Adams asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

SENATE BILL 561 ON THIRD READING

Senator Schwartz moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 561** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Yeas: Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Nays: Adams.

Absent-excused: McKinnon.

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1.

Yeas: Aikin, Andujar, Braecklein, Brooks, Clower, Creighton, Doggett, Farabee, Gammage, Hance, Harrington, Harris, Jones, Kothmann, Lombardino, Longoria, Mauzy, McKnight, Meier, Mengden, Moore, Ogg, Patman, Santiesteban, Schwartz, Sherman, Snelson, Traeger and Williams.

Nays: Adams.

Absent-excused: McKinnon.

NOTICES OF INTENT

The following Notices of Intent were filed with the Secretary of the Senate:

Tuesday, April 8, 1975

H.B. 564 - Senator Ogg
C.S.S.B. 69 - Senator Moore
S.B. 104 - Senator Schwartz
C.S.S.B. 109 - Senator Mauzy
C.S.S.B. 110 - Senator Mauzy
S.B. 131 - Senator Meier
C.S.S.B. 162 - Senator Harris
S.B. 193 - Senator Snelson
S.B. 228 - Senator Moore
S.B. 241 - Senator Adams
C.S.S.B. 242 - Senator Adams
C.S.S.B. 244 - Senator Ogg
S.B. 247 - Senator Farabee
C.S.S.B. 250 - Senator Mauzy
S.B. 257 - Senator Mauzy
C.S.S.B. 262 - Senator Doggett
C.S.S.B. 270 - Senator Doggett
S.B. 309 - Senator Snelson
C.S.S.B. 319 - Senator Patman
C.S.S.B. 348 - Senator Braecklein
C.S.S.B. 397 - Senator Doggett
C.S.S.B. 412 - Senator Harris
C.S.S.B. 415 - Senator Andujar
S.B. 423 - Senator Harris
S.B. 469 - Senator Meier
C.S.S.B. 472 - Senator Schwartz
S.B. 486 - Senator Creighton
S.B. 490 - Senator Jones
S.B. 497 - Senator Mauzy
S.B. 520 - Senator Mauzy
C.S.S.B. 558 - Senator Lombardino
C.S.S.B. 599 - Senator Ogg
S.B. 705 - Senator Mauzy
S.B. 718 - Senator Aikin